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October 15, 2008

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Notice of Ex Parte Presentation*: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92

Dear Ms. Dortch:

Yesterday, Michael Hou of Broadview Networks, Inc., Ed Cadieux of NuVox Communications, Brad Lerner, of Cavalier Telephone, and the undersigned, of Kelley Drye & Warren, LLP, met with Scott Deutchman, Legal Advisor for Commissioner Copps. Our discussion focused on points addressed previously in filings made by the meeting participants in the above-captioned docket and contained in the attached presentation.

Please contact the undersigned at (202) 342-8531, if you have any questions about this letter. A copy of the presentation used at the meeting is attached.

Respectfully submitted,

Genevieve Morelli

Genevieve Morelli

Attachment

INTERCARRIER COMPENSATION REFORM

CC DOCKET NO. 01-92
October 16, 2008

Broadview Networks, Inc.
Cavalier Telephone
NuVox
XO Communications, LLC

The Intercarrier Compensation System Is In Need Of Overhaul But Is Not In Crisis

- The Commission should focus on deciding several discrete issues that are ripe for decision.
  - ISP-bound traffic
  - Phantom Traffic
  - Traffic Stimulation
- The Commission should issue an FNPRM containing tentative conclusions and proposed rules on broader intercarrier compensation issues and should afford interested parties reasonable time to comment on its proposals.

The Commission Should Adopt A Uniform Cost-Based Rate For Termination Of All Interstate Traffic

- The Commission should adopt a uniform cost-based rate for traffic termination that would apply to all traffic within the federal jurisdiction at the end of a transition period.
- The $0.0007 rate proposed by Verizon is below cost.
  - XO and NuVox cost studies demonstrate the costs of terminating traffic are well above $0.0007.
  - ITTA has indicated that $0.0007 is below the cost of billing for rural ILECs.
  - QSI nationwide survey of TELRIC-based reciprocal compensation rates shows a weighted average of $0.0027, more than 4X the rate proposed by Verizon.

Adoption Of A Below-Cost Termination Rate Would Create Market Distortions

- Adoption of a below-cost rate would create new arbitrage opportunities.
  - Carriers will seek out customers with disproportionate amounts of outbound traffic.
- Mandating a below-cost rate would discourage facilities investment.
  - Carriers would be unable to fully recover the costs of providing facilities-based service.
- Adoption of a below-cost rate would allow carriers with no facilities to "free ride" on the investments of facilities-based carriers.
- The lower the compensation rate, the greater the impetus for a revenue recovery mechanism.

The Commission Should Limit Its Decision To Traffic That Clearly Is Within Its Jurisdiction

- The Commission should limit its decision to interstate access (including both TDM and IP-PSTN traffic), ISP-bound traffic, and CMRS traffic.
  - IP-PSTN traffic should be treated the same as TDM traffic on a prospective-only basis.

The Compensation Scheme The FCC Adopts Cannot Impose Asymmetric Compensation Obligations On Different Classes Of Carriers

- Any approach under which CLECs would charge the end office compensation rate while ILECs would be permitted to assess additional access tandem and transport charges would not be competitively neutral and should be rejected.

The Transition Plan Must Be Competitively Neutral And Afford Carriers a Reasonable Opportunity To Adjust Their Business Plans

- The transition period should be of sufficient length to allow carriers and customers to adjust without undue hardship.
- The new uniform federal compensation rate should be phased-in over 7 years.

Any Revenue Recovery Mechanisms Adopted By The Commission Must Be Competitively Neutral

- CLECs must be permitted to participate in any revenue recovery mechanisms the Commission chooses to create.
- Revenue recovery mechanisms for price cap ILECs should be limited to increases in federal SLC caps for residential and multi-line businesses.
  - SLC cap increases must be administered in a competitively neutral manner.
- Any USF-based recovery mechanism should be limited to rate-of-return ILECs.

The Commission Should Not Address Network Architecture Issues

- There is no need for the Commission to address network architecture issues in order to reform intercarrier compensation.
  - Network interconnection matters are subject to state jurisdiction and oversight through the Sec. 251/252 ICA process.
  - Commission-imposed changes to current network interconnection arrangements are unnecessary and would be unduly disruptive.

The Commission Should Adhere To The Current Tariffing And ICA Framework

- Access rates should continue to be tariffed and made available to all similarly-situated carriers on a non-discriminatory basis.
- Traffic subject to reciprocal compensation should continue to be governed by ICAs pursuant to the Sec. 252 approval process and be available for opt in.
- Carriers should remain free to negotiate commercial agreements to govern their compensation obligations.
  - Commercial agreements are subject to filing at the FCC pursuant to Sec. 211 and must be made available to all similarly-situated carriers on a non-discriminatory basis.

Critical Issues With A Numbers-Based USF Contribution Mechanism Must Be Resolved Prior To Implementation

- Prior to implementation, the Commission must determine:
  - How to treat services that have no numbers.
    - The Commission should reject the notion of adopting a hybrid system, which would compel carriers to maintain two internal systems.
  - How to address the potential adverse impact on services that have a low revenue-per-number ratio or a low interstate volume-per-number ratio.
  - How to avoid adverse impact on small and mid-sized businesses, government and military users, universities, hospitals and others that assign many numbers behind a PBX or have many telephone numbers with little interstate/international volume.
- The Commission must adopt a transition period of at least 5 years.